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10/509,746	12/23/2004	Francois Quetel	Q83748	4368
23373 7590 05/26/2010 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
DOE, SHANTA G				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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# Office Action Summary

## Application No.

10/509,746

## Applicant(s)

QUETEL ET AL.

## Examiner

SHANTA G. DOE

## Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 16 February 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1, 3-5, 7 and 8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1 and 3 is/are allowed.
- 6) ☒ Claim(s) 4, 5 and 8 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 30 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ ~~Notice of Informal Patent Application~~
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

1. The amendment filed on 2/10/2010 has been acknowledged and entered by the examiner.

### ***Response to Arguments***

2. Applicant's arguments filed 2/10/2010 have been fully considered but they are not persuasive. The applicant's argument that the combined references (Marchau et al (WO 99/03667) in view of APA, Swank et al (US 6,183,691), Kuwata et al (JP 06-171697) and Doudement et al (US 5,186,307)) fail to disclose that the pair of rails shields the perform bodies from the decontaminating liquid sprayed from the spray means was not found persuasive because the applicant did not claim at the time of the office action dated 10/14/2009 that the pair of rails shields the preform bodies from the decontaminating liquid sprayed from the spray means. Additionally the pair of rails being used to shield the perform bodies from the decontaminating liquid sprayed from the spray mean is an intended use of the pair of rails which does not further limit the device structurally. It appears from fig 3 of Doudement that the prior art rails would be capable of such intended use (it seems from the drawing that the rails form a seal around the perform where it is held between the rails). Furthermore the applicant argues that the prior art rails would not be capable of the intended use. However, this argument was not found persuasive because the applicant has not shown any difference in structural limitations between the prior art rails and the rails as claimed by the applicant that would

enable the applicant's rails to shield the perform bodies from the decontaminating liquid sprayed from the spray mean and not the prior. The applicant just merely states that the prior art rails would not capable of such intended use.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 4, 5, and 8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, the applicant did not disclose in the originally filed application a pair of rails forming a ***narrow opening*** configured to engage the preform.... and failed to specifically mentioned that the ***pair of rails shields the preform bodies from the decontaminating liquid sprayed from the spray means***.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 4, 5 & 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchau et al (WO 99/03667) in view of admitted prior art, Swank et al (US 6,183,691 ), Kuwata et al ( JP 06-171697) and Doudement et al (US 5,186,307).

9. Regarding 4, Marchau discloses an installation (system) for the decontamination while they are moving of the necks of preforms (3) delivered one after the other to a loading device (see fig 1), said preforms being made of thermoplastic and being

intended for making into containers (e.g. bottle (110)) by blow molding or stretch-blow molding, said

decontamination installation being structurally and functionally connected to a preform feeder installation (2) comprising means for moving the preforms one after the other along a path wherein the feeder is configured to engage said preform such that said preform neck ride above the rail of the feeder while the body of the preform ride below the rail and where the rails of the feeder is disposed between the spray and the bodies of the preform(see fig 1); the decontamination installation contains a means of spraying (sprayer 45) the preform with hydrogen peroxide and lamps (104) to decontaminate said preform (Marchau (WO 99/03667 fig 1 page 3 paragraph 5; page 5 paragraph 2; page 6 paragraph 8; page 7 paragraph 1-4; page 11 paragraph 2).

However, Marchau does not disclose an installation for decontaminating preforms wherein said decontamination installation comprises ultraviolet lamps arranged so that the ultraviolet radiation completely irradiates the necks of the moving preforms, wherein the decontamination installation also includes, upstream of the ultraviolet lamps, a chamber traversed by said preforms movement means of the feeder installation and in which means are provided for spraying (sprayer 45 above the preforms movement means) a decontaminating product continuously towards necks of said preform so as to wet inside and outside surfaces of the necks and so as to maintain a fog of the decontaminating product inside said chamber. Additionally, Marchau fails to disclose that a suction means is connected to the decontamination chamber and that the preform feeder comprises a pair of rails forming a path.

Swank ('691) discloses a decontaminating/sterilizing system (installation) for partially formed material (20), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen peroxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is known that air saturated with  $H_2O_2$  vapor forms condensation droplets of  $H_2O_2$  in air (mist or fog) when temperature decreases) continuously towards necks of said preforms so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then passes wetted necks in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit (see Swank ('691) abs; fig. 2; col. 4 lines 40 - 65; col. 5 lines 30-40 and col. 6 lines 47 - 63).

Kuwata et al. (JP 06-171697) discloses sterilization or decontaminating room/enclosure with a suction means connected to the enclosure in order discharge/remove air from the enclosure (see Kuwata abs).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the decontamination installation of Marchau with the decontamination system taught by Swank since Swank discloses that it was known in the art at the time the invention was made to use such an installation to decontaminate

partially formed containers in a fabrication process stated at col. 4 lines 60 - 65 that such a modification provides for a synergistic sterilization effect between the UV radiation and hydrogen peroxide.

Furthermore, in view Kuwata et al., it would have been obvious to one having ordinary skill in the art at the time of the invention to have the combination above further comprise a suction means connected to the decontamination chamber/enclosure as taught by Kuwata because as stated by Kuwata such a modification would allow air from the enclosure to be removed thereby removing spent decontaminating fog.

Doudement et al (US 5,186,307) discloses that a preform feeder comprising a pair of rails forming a narrow opening (the space between the rail where the preform are held, see Doudement fig 3) configured to engage said preform such that said preform necks ride above the rail of the feeder rail while the bodies of the preforms ride below the rail (see abs and fig 3).

In view of Doudement, it would have been obvious to one having ordinary skill in the art at the time of the invention to have the preform feeder of the combined reference comprise a pair of rails as disclosed/taught by Doudement, since the feeder of Doudement is a known functionally equivalent means known in the art for feeding a preform.

Additionally, the phrase "the pair of rails been use to shield the perform bodies from the decontaminating liquid sprayed from the spray mean" is an intended use of the pair of rails which does not further limit the device structurally. It appears from fig 3 of



Doudement that the prior would be capable of such intended use (it seems from the drawing that the rails form a seal around the perform where it is held between the rails).

Regarding claims 5, the combined references disclose the installation as claimed in claim 4, wherein there is a sprayer which aims roughly in the direction of the necks of the moving preforms (see fig 1). However the combination does not disclose the installation of claim 4 wherein the spray means comprise at least two spray nozzles arranged one on either side of the preforms movement means and above these, with their respective axes aimed roughly in the direction of the necks of the moving preforms. However, the applicant admits that it is conventional to place the neck of each preform under a decontaminant source to decontaminate the neck of preform wherein the decontaminant source is distributed on either side of the perform movement means (see applicant's specification page 2 lines 5 -line 20).

Swank ('691) discloses a decontamination installation comprising applicators / sprayers (30A and 30B) which may be nozzles for spraying hydrogen peroxide (see Swank col. 6 lines 47 - 63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the sprayers of the hydrogen peroxide (decontaminant source) of the combined references be arranged one on either side of the preform movement means and above these, since it was conventional to do so as admitted by the applicant.

Further more it would have been obvious to use a nozzle as the spraying means since it is well known in the art to use nozzle as a spraying means.

Regarding claim 8, the combined references disclose the installation as claimed in claims 4. The combination does not disclose the installation of claim 4 wherein the preform movement means comprises an inclined slideway (slide guide) down which the preforms slide by gravity one after the other and that this slideway passes through the chamber.

However, the applicant admits that it is known in the art to use a preform movement means comprising an inclined slideway (slide guide) down which the preforms slide by gravity one after the other in a decontamination installation in that this slideway passes through the chamber (see applicant's specification page 2 lines 5 – line 20).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the feeding means taught in the admitted prior art since it was known in the art at the time as a conventional preform movement means.

***Allowable Subject Matter***

10. Claims 1 & 3 are allowed.

11. The following is an examiner's statement of reasons for allowance:

12. Regarding claim 1, the prior art fails to disclose a method of decontaminating necks of thermoplastic preforms before said preforms are blow molded comprising providing a pair of rails forming a path, the pair of rails configured to engage said preform such that the preform necks ride above the pair of rails while bodies of the preforms ride below the rail wherein the pair of rails is disposed between the spraying means and the bodies of the preforms; passing the preforms one after another through an upstream chamber inside which the preform necks move along the path, spraying continuously a decontaminating liquid inside said chamber towards said path in such a manner that a fog atmosphere of said decontaminating liquid is maintained inside said chamber with said necks being bathed in said fog and with said preform necks having inside and outside surface wetted by said liquid.

Claim 3 is allowable based on its dependency on claim 1.

13. Claim 7 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 7 is indicated as allowable because the installation as claimed in claim 4, wherein the preform movement means are surmounted, above the necks of the preforms, by a rod of relatively small transverse dimension relative to the diameter of the necks could not be found in the prior art.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SHANTA G. DOE** whose telephone number is (571)270-3152. The examiner can normally be reached on **Mon-Fri 8am-5pm**.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797